

### **Rule 3, Ariz. R. Crim. P.**

#### **Arrest, in general: probable cause requirement.....Revised 1/2010**

The Fourth Amendment requires every arrest be supported by probable cause. *Michigan v. Summers*, 452 U.S. 692, 700 (1981); see *State v. Houlf*, 27 Ariz. App. 633, 636, 557 P.2d 565, 568 (App. 1976) [probable cause is the essential prerequisite to a lawful arrest]. “Probable cause exists ‘when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense.’ *State v. Jackson*, 208 Ariz. 56, 65, ¶ 31, 90 P.3d 793, 802 (App. 2004), quoting *State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000). As long as the arresting officer has probable cause, the Fourth Amendment allows the officer to make an arrest with or without a warrant. *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371 (1980); A.R.S. § 13-3883; *State v. Diaz*, 222 Ariz. 188, ¶ 3, 213 P.3d 337, 338 (App. 2009) (“A warrantless arrest is lawful if it is supported by probable cause.”); *State v. Keener*, 206 Ariz. 29, ¶ 15, 75 P.3d 119, 121 (App.2003).<sup>1</sup> If a warrantless arrest is not supported by probable cause, it is invalid regardless of whether the arresting officer acted in good faith. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

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<sup>1</sup> A.R.S. § 13-3883(A)(1) allows an officer to make a warrantless arrest when there is probable cause to believe a felony has been committed and the person to be arrested has committed the felony. In addition, A.R.S. § 13-3883(A)(4) allows an officer to make a warrantless arrest when there is probable cause to believe a misdemeanor has been committed and the person to be arrested has committed the misdemeanor, even though A.R.S. § 13-3883(A)(2) allows an officer to make a warrantless arrest when a misdemeanor has been committed “in his presence” and has probable cause to believe the person to be arrested has committed the misdemeanor. See *State v. Keener*, 206 Ariz. 29, 31, ¶ 10, 75 P.3d 119, 121 (App. 2003) (despite conflicting language in the statute, A.R.S. § 13-3883(A) allows an officer to effect a warrantless arrest for a misdemeanor even if the crime was not committed in his presence).

When police must enter a suspect's home to effect an arrest, however, the police are generally required to obtain a warrant first. *Payton v. New York*, 445 U.S. 573, 576 (1980). However, a warrantless arrest may be justified if one of the following exceptions is present: consent, response to an emergency, hot pursuit, or probability of imminent destruction of evidence or their removal from the jurisdiction. *Vale v. Louisiana*, 399 U.S. 30, 35 (1970); *State v. Davis*, 119 Ariz. 529, 532-33, 582 P.2d 175, 178-79 (1978). In *State v. Smith*, 208 Ariz. 20, 22, ¶ 7, 90 P.3d 221, 223 (App. 2004), officers had a valid arrest warrant for Smith, but not to search his home. The Court of Appeals noted that an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling where the suspect lives if there is reason to believe the suspect is inside. This "reason to believe" standard "requires a level of reasonable belief similar to that required to support probable cause." *Id.* at 23, ¶ 10, 90 P.3d at 224. In *State v. Canez*, 202 Ariz. 133, 151, ¶ 54, 42 P.3d 564, 582 (2002), the Arizona Supreme Court held that the defendant was arrested and seized when police confronted him in the bathroom of his own home and told him he had to come outside. The Court found that a reasonable person under those circumstances would not have felt free to disregard the police and go about his business.

A non-governmental, private person need not have probable cause to effect a citizen's arrest because the Fourth Amendment applies only to governmental actions. A private person may arrest a person if that person "has in his presence committed a misdemeanor amounting to a breach of the peace, or a felony," or when "a felony has been in fact committed and he has reasonable ground to believe that the person to be

arrested has committed it.” A.R.S. § 13-3884. In *State v. Chavez*, 208 Ariz. 606, 609, ¶¶ 12-14, 96 P.3d 1093, 1096-1097 (App. 2004), the Court of Appeals held that the defendant’s drunken driving constituted a “misdemeanor amounting to a breach of the peace” allowing a private person to arrest the defendant, noting, “[T]he Fourth Amendment’s requirement of probable cause simply was not implicated here.” *Id.* at 609, ¶ 14, 96 P.3d at 1097.